

A Primer on Civil Service Law

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What is Civil Service?

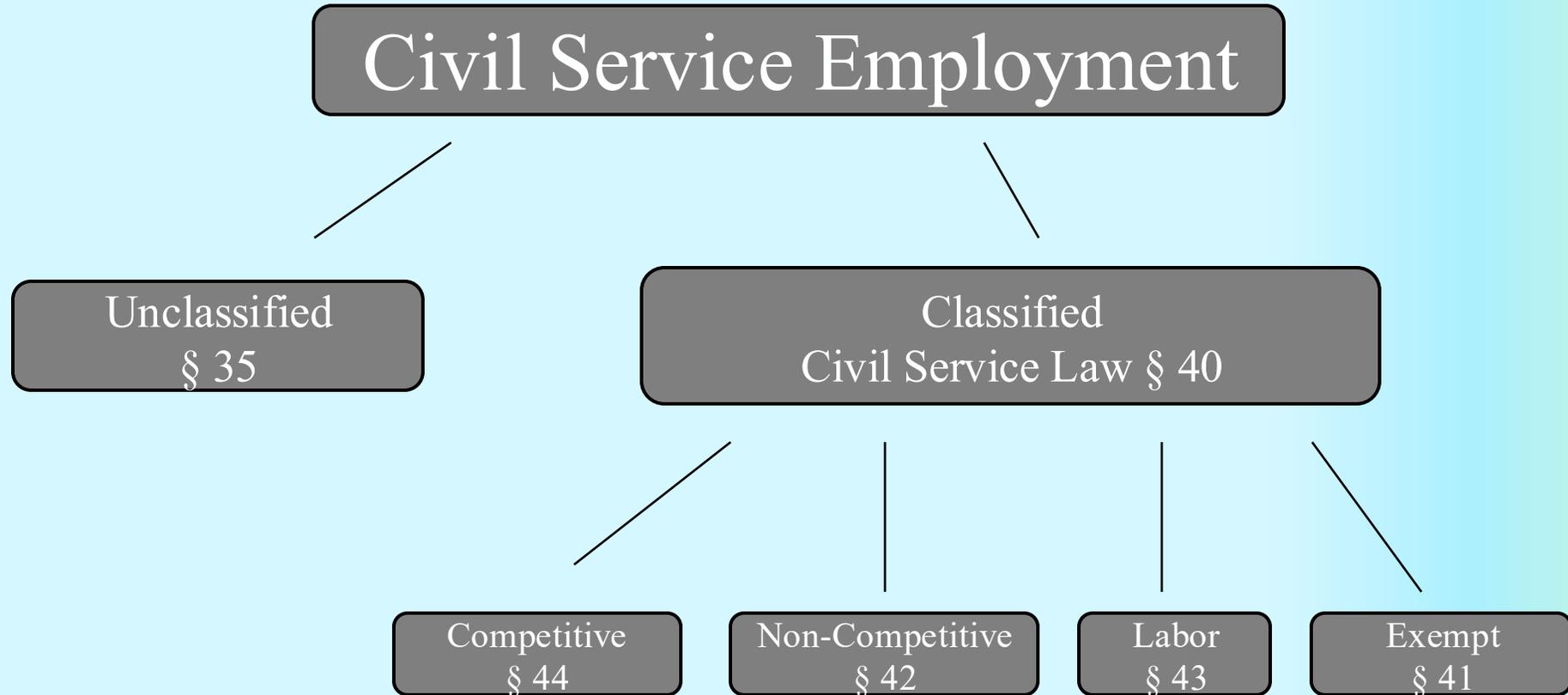
- Government service: composed of **qualified people selected based upon merit.**
 - Created Civil Service Commission to carry-out and administer Civil Service Law
- Article V, Section 6 of the Constitution of New York:
 - Merit based system was embodied in the NY Constitution
 - “Appointments and promotions in the civil service of the state and all of the **civil divisions thereof**, including cities and villages, shall be made according to merit and fitness...”
- School districts are considered a civil division of the State and therefore subject to Civil Service Law. *Scahill v. Drzewucki*, 269 N.Y. 343, 346 (NY 1936); See also, *Palmer v. Board of Educ.*, 276 N.Y. 222 (NY 1937)
 - The civil service includes all offices and positions in the service of the state or any of its civil divisions, including school districts. (*Civil Service Law* §§ 17 (1)-(2), 35(g))

What does this mean for School Districts?

All hiring decisions must be made in accordance with Civil Service Law!

- Civil Service is divided in two broad categories;
 - Unclassified Service: traditionally the instructional positions (certified) in a school district including teachers, administrators, and supervisors.
 - “The commissioner of education shall prescribe qualifications for appointment for all classes or positions so certified by him, and shall establish specifications setting forth the qualifications for and the nature and scope of the duties and responsibilities of such positions.” *Civil Service Law §35(g)*
 - Classified Service: traditionally comprises all other non-instructional positions in a school district.

Civil Service Employment



Unclassified Service

- UNCLASSIFIED Service (§35) includes all elective offices and the head or heads of any department of the government who are vested with authority, direction and control over a department, and who have power and authority to appoint and remove employees and officers therein.
- Examples of unclassified service:
 - Elected Officers
 - Certified employees (Certified Administrators, Teachers, Teaching Assistants)
- Civil Service merit and fitness checks **do not apply** to jobs in the unclassified service.

Classified Service

- Generally speaking, the CLASSIFIED Service (§40) includes all other employees.
- The Classified Service is divided into four subcategories:
 - Competitive
 - Non-competitive
 - Labor
 - Exempt
- The County Civil Service Department or the City Civil Service Commission exercises jurisdiction over all employment of the classified service in the District.
- Civil Service Classifications vary from civil service commission to civil service commission.

Competitive Positions

- Competitive (§44) – Must meet minimum qualifications set by the local civil service and are subject to a competitive examination. Unless designated by law or administrative action of the local civil service, the position falls in the competitive classification.
- Example of competitive positions:
 - Typist
 - Account Clerk

Non-Competitive Positions

- Noncompetitive (§42) – Qualifications can be objectively assessed, but no written or oral examination is given. Civil service sets minimum qualifications.
- The Board can select any candidate, provided the candidate meets the minimum educational and experience qualifications for the job.
- Example of non-competitive positions:

MEOs	Teacher aide
Cooks	Maintenance workers
Groundskeeper	Automotive mechanics

Labor Positions

- Labor (\$43) – Unskilled positions, with no minimum qualifications.
- Example of labor positions:
 - Laborers
 - Cleaners
 - Sanitation workers
 - School Monitors / School Bus Monitors
 - Cleaners
 - Food Service Helpers



Exempt Positions

- Exempt (§41) – all positions for which a competitive or noncompetitive examination is not practicable.
 - Often involves highly confidential duties, but confidentiality does not require an exempt classification.
 - Example of exempt positions:
 - District Clerk
 - Secretary to the Superintendent
 - School District Treasurer
 - School Tax Collector
 - School District Internal Claims Auditor
- Which Exempt Titles Report Directly to Board?

Exempt Positions

- The Appointing Authority has complete discretion in selecting the person.
- Civil Service Classifications vary from civil service commission to civil service commission.
- **Be sure to check the local civil service commission's rules!**

Creating New Positions

- Civil Service Law § 22 provides:
- Before any new position in the service of a civil division shall be created or any existing position in such service shall be reclassified, the proposal therefor, including a statement of the duties of the position, shall be referred to the municipal commission having jurisdiction and such commission shall furnish a certificate stating the appropriate civil service title for the proposed position or the position to be reclassified. Any such new position shall be created or any such existing position reclassified only with the title approved and certified by the commission.

Competitive Class Employees:

- Civil Service Law, Section 17.4:
 - Local Personnel Officer has the authority to conduct examinations and establish eligible lists.
- Civil Service Law, Section 23.2:
 - Requires NYS Department of Civil Service to render exam services to locals upon request.



Types of Examinations

- Written Test – typically multiple choice
- Ratings of Training and Experience (T & E's)
- Performance Tests
- Physical Agility Tests
- Oral Examinations
- A particular examination may be a combination of some of the above types.

Eligible List

- An eligible list is established by the Civil Service Department based on the candidates' ranking on the examination, including veteran credit.
- The eligible list:
 - Sets forth the period for which the list is valid.
 - Is valid for a period of not less than one (1) year and not more than four (4) years.
 - Terminates upon the establishment of an appropriate new list.
- Civil Service can extend the eligible list if it is less than four (4) years - up to a total maximum of four (4) years.
- Vacancies are to be filled by promotion examination rather than by open competitive examination, as far as practicable.
- An employer can request a residency list which gives preference to residents over non-residents. However, once the employer makes an appointment from a residency list, it must continue to do so until the list of residents is exhausted.

Canvassing the Eligible List

- The municipality must canvass the list of eligible candidates to determine who is willing to accept the appointment, if offered it.
- Canvassing is nothing more than an inquiry as to whether the eligible would be willing to accept the appointment, if it were offered. It is not an offer of employment.
- Some County Civil Service Rules require a candidate to respond within a certain time frame.

Eligible List Usage

- Rule of Three
- Appointments from an eligible list must be made from among one of the three persons standing highest on an eligible list.



Example

1. Lisa	100	reachable
2. Carol	95	reachable
3. Jim	90	reachable
4. Frank	90	reachable
5. Amy	90	reachable
6. Anne	90	reachable
7. Linda	90	reachable
8. Sandra	90	reachable
9. Joe	85	not reachable

Provisional Appointment: (Civil Service Law § 65)

- An appointment made to a competitive classification when:
 - there is no eligible list available; or
 - the available list contains the names of less than 3 willing to accept and a candidate is selected who is not on that list (exam has not been given, list expired, or less than 3 eligible candidates).
- Time worked in a provisional appointment now counts toward satisfying a probationary period.
 - On or after September 7, 2023, any employee serving provisionally in a title that receives a permanent appointment immediately following the provisional service to the same title shall have all actual service time in provisional status counted towards completing the required probationary period Civil Service Law § 52
- A Provisional appointment must meet minimum qualifications. Position should only be for a 9 month period, but can be extended under extenuating circumstances. May be fired for any reason (provided not discriminatory or illegal) during provisional appointment.

NY HELPS Program

- The program is intended to help local government agencies fill positions that are typically filled through a civil service examination open to the public (open-competitive).
- The program temporarily waives the civil service exam requirements for specific titles, and allows for competitive titles to be filled via non-competitive appointment (as long as meet minimum qualifications).
- The eligible list does not need to be exhausted for applicable positions.
- Employees appointed under the NY HELPS program are converted on a regular basis to the competitive class.
- The NY HELPS program has been extended through **June 30, 2026**.

Civil Service Transformation

- New program to address shortcomings of traditional civil service system - anticipated in July, 2026
- Traditional open-competitive examinations will be held via vacancy-based training and experience examinations (T&E) (except police and fire examinations).
- **What is a vacancy-based T&E?**
 - A civil service assessment method that scores candidates based on their education and work experience rather than a written cognitive test.
 - Candidates will apply online to job postings in which they are qualified and will go through an online T&E examination to evaluate their education, experience and skills against the posted job requirements.
 - The T&E examination will be scored to assess the candidate's merit and fitness as it relates to the posted job they are applying for.
 - The rule of three will still apply.

Challenges in Navigating Civil Service Hiring Processes

Probationary Period

- Civil Service Law § 63:

- All permanent employees must complete a probationary period, there is a minimum and maximum.
 - The minimum probationary period is typically 8 weeks (12 weeks in Westchester County).
 - There is, however, a wider range in maximum. Most are 26 or 52 weeks.
 - Again, consult your civil service rules!

Probationary Period (continued)

- After completion of minimum period, but prior to completion of maximum period, employee may be fired for any reason (provided not discriminatory or illegal reason).
- After the completion of the probationary period, the appointment becomes permanent in all respects.
- What due process, if any, is required to terminate an employee's service, prior to the completion of the minimum probationary period?

Temporary Appointment

- Civil Service Law § 64 – A short term appointment

Up to 3 months	anyone qualified regardless of the existence of a list.
3 – 6 months	anyone on list, if list exists.
6 months or greater	1 of top 3 willing to accept such a position from list, if list exists.
12 months	if the position will not continue in existence beyond that period.
18 Months	for special study or project that will not continue in existence beyond that period (but not only because the position may be grant funded)

Termination of Employment Due to Extended Work-Related Absence

- Civil Service § 71: If an employee is disabled as a result of an occupational injury or disease (workers' compensation) and they have been absent from and unable to perform the duties of their position for a cumulative period of one year or more by reason of their occupational injury or disease, the municipality can separate the employee from service based on a §71 proceeding.
- Exception: For disability resulting from assault sustained in the course of employment – up to two (2) year leave of absence.

Termination of Employment Due to Extended Non-Work-Related Absence

- Civil Service § 73:
- If an employee is disabled due to an ordinary disability and has been continuously absent from and unable to perform the duties of their position for one year or more by reason of a disability, the Municipality may terminate the employee's services should they be found medically or physically unable to perform the duties of their position.

Employee Discipline Under NYS Civil Service Law Section §75

Employees Covered:

- Competitive (permanent appointment)
- Non-Competitive or Labor (continuous employment of 5 years or more unless designated by Civil Service as confidential or policy making)
- Veteran during time of war (honorably discharged as defined in CSL §85) after completion of probationary term.
- Volunteer Firefighters (as defined in GML §200) after completion of probationary term.

Section §75 - Statute of Limitations:

- 18 Months.
- Time limitation not applicable if incompetency or misconduct alleged constitutes a crime.
- Employee is entitled to:
 - A written notice of the charges
 - Opportunity to answer charges (Note: Employee must be given at least eight (8) calendar days to submit answer to charges).
 - A due process hearing before the appointing authority or someone designated by the appointing authority.

Charges:

- Basis for Charge:
 - Misconduct or Incompetence.
- Option for Suspension Pending Determination of Charges:
 - Without pay for a period not exceeding 30 days (if acquitted, restored to position with full back pay, less any unemployment).
- Charges:
 - Charges should specify penalty desired
 - Penalties Authorized by Section 75
 - Fine not to exceed \$100
 - Suspension not exceeding two months
 - Demotion in grade and title
 - Dismissal
 - Reprimand
 - Multiple penalties are not authorized

Who Serves as Hearing Officer:

- Appointing Authority or Hearing Officer appointed by Appointing Authority.
- If a Hearing Officer is used, their findings and recommendations, along with stenographic record of the hearing, are given to the appointing authority for review and decision.
- The appointing authority can accept, modify or reject Hearing Officer's findings of fact and penalty recommendation.

Hearings:

Hearing officer compensation	Paid by Public Employer
Burden of Proof	Charging Party
Representation of Employee	Attorney or Union Rep. (Employee allowed to summon witnesses on their own behalf).
Rules of Evidence	Not Strictly Followed

Hearings:

Transcript	Yes (paid for by Employer and provided without charge, upon request, to the employee).
Filing of Record	If employee found guilty, a copy of charges, answer, transcript and determination must be filed with the Public Employer, as well as the Civil Service Commission having jurisdiction over the position.
Appeal	As provided for in CSL §76, either court via Art. 78 proceeding (four-month statute of limitations) or Civil Service Commission having jurisdiction over a municipality (20 days to appeal to Civil Service Commission having jurisdiction over the municipality).

Pell Standard

- Whether the punishment is “so disproportionate to the offense, in light of all circumstances, as to be shocking to one’s sense of fairness.”

Matter of Pell v. Board of Education, 34 NY2d 222 (1974)

Disciplinary Provisions in Collective Bargaining Agreements

- Some collective bargaining agreements expand the scope of covered employees (e.g., they may include employees of the labor or non-competitive classification with less than 5 years of service), or provide an alternative due process procedure to § 75.
- Courts and Arbitrators have routinely confirmed that parties may modify or replace Civil Service Law §75 through collective bargaining; however, “such a provision [of a collective bargaining agreement] **must be clear and unambiguous** in effecting the modification or replacement in order to be enforceable.” Ortlieb v. Lewis County Sheriff’s Department, 155 A.D.3d 1628, 1630 (4th Dept. 2017).

Disciplinary Arbitration

- In 2024, Governor vetoed a bill to change Civil Service Law §75, which would have done away with pre-hearing suspension without pay, the ability of the District to determine who would serve as the hearing officer and to require a court order to continue pre-hearing suspensions beyond 30 days.

Disciplinary Arbitration

- The Governor's veto message encouraged collective bargaining to address the unions' concerns.
- May be worth considering replacing the statutory provisions of C.S.L. §75.
 - Arbitration in lieu of the statutory provision assures that a court will not reverse the discipline meted out by the arbitrator, in which event the only offset to back pay would be unemployment insurance payments to the employee.
 - The arbitrators would be mutually agreed upon and stated in a contractual provisions.

Questions????

